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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/922,520	08/03/2001	Donald Pham	CISCO-4113	8849

28661 7590 06/29/2007
SIERRA PATENT GROUP, LTD.
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EXAMINER

DUONG, DUC T

ART UNIT	PAPER NUMBER
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2616

MAIL DATE	DELIVERY MODE
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06/29/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary	Application No. 09/922,520	Applicant(s) PHAM ET AL.	
	Examiner Duc T. Duong	Art Unit 2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5-7,11-13,17-21 and 25-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5-7,11-13,17-21 and 25-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1, 5-7, 11-13, 17-21, and 25-30 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 7, 13, 19, 29, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Claessens et al (US Patent 7,222,255 B1) in view of Zerlan (US Patent 7,010,295 B1).

Regarding to claims 1, 7, 13, and 19, Claessens discloses an apparatus for measuring the performance of a scalable network (fig. 2) comprising means 202 for preparing the network for testing (fig. 2 col. 6 lines 35-37); means 202 for establishing an IP routing path for a session to be tested (fig. 2 col. 9 lines 61-67 and col. 10 lines 1-10); means 212/218/224/232 for sending a constant stream of packets to a client node 214/216/228/230 (fig. 2 col. 5 lines 19-27); and means 214/216/228/230 for counting said received packets (fig. 2 col. 14 lines 45-50); and establishing a peak performance rate as the highest rate with no packet dropout (col. 2 lines 47-62).

Claessens fails to teach for the routing path is a static IP route.

However, Zerlan discloses a method and system for testing various elements in a communications network using static IP route (fig. 5 col. 7 lines 24-27).

Thus, it would have been obvious to a person of ordinary skill in the art, at the time of the invention, to arrange for testing of communications network using static IP route as taught by Zerlan in Claessens's system since such static IP route cost less to implement and offers more enhanced security than dynamic route.

Regarding to claim 29, Claessens discloses the packet generator is configured to perform testing using software (fig. 2 col. 5 lines 27-32).

Regarding to claim 30, Claessens discloses for a test configuration file is download from a TFTP server (col. 5 lines 38-41).

4. Claims 5, 6, 11, 12, 17, 18, 20, 21, and 25-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Claessens and Zerlan in view of Beverly, IV (U.S. Patent 6,732,182 B1).

Regarding to claims 5, 6, 11, 12, 17, 18, 20, 21, and 25-28, Claessens and Zerlan disclose all the limitations with respect to claims 1, 7, 13, and 19 except for the constant stream of packets are sent over an OC-3 or OC-12 level networks. However, Beverly discloses a system for generating a packet loss report, wherein test packets are sends over an OC-3 or OC-12 level (col. 4 lines 21-26) via Ethernet pathways 224-228 (fig. 2 col. 6 lines 16-20). Thus, it would have been obvious to a person of ordinary skill in the art to employ a transmission of test packets over OC-3 and OC-12 network via Ethernet pathways as taught by Beverly in Claessens and Zerlan's system for measuring the performance of high speed networks, such as SONET or SDH.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Duc T. Duong whose telephone number is 571-272-3122. The examiner can normally be reached on M-F (9:00 AM-6:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy D. Vu can be reached on 571-272-3155. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Daniel J. Ryman
Patent Examiner
AU 2616

Daniel Ryman